

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN DWAYNE POLK,

Defendant-Appellant.

UNPUBLISHED

March 27, 2014

No. 314094

Berrien Circuit Court

LC No. 2012-002911-FC

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury-based convictions of preparation to burn, MCL 750.77(1)(c)(i), and assault with intent to commit great bodily harm less than murder, MCL 750.84.¹ We affirm.

Defendant's convictions arose from his conduct at the house where he lived with Sandra Banks and Kimberly Fultz. In July 2012, Banks and defendant argued about a car that had been sitting in the driveway for three days. Defendant went outside and returned with a gasoline can. Banks testified that defendant poured gasoline on the dining room and kitchen floors. Banks went on to testify that defendant then began flicking a lighter and asking Banks whether she was scared. Banks called the police; defendant left the house and was arrested shortly thereafter. Officer Wesley Koza interviewed defendant at the police station. Defendant waived his *Miranda*² rights, admitted to pouring gasoline in the house and stated that he had initially intended to light the house on fire but that he had changed his mind.

On appeal, defendant argues that the evidence was insufficient to establish that he intended to cause a fire or inflict great bodily harm. We review de novo defendant's challenge to the sufficiency of the evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court views the evidence in a light most favorable to the prosecution to determine

¹ After the date at issue in this case, our Legislature amended both these statutes. See 2012 PA 533 (amending MCL 750.77, effective January 2, 2013); 2012 PA 367 (amending MCL 750.84, effective April 1, 2013).

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

whether a reasonable juror could find that the prosecution proved the essential elements of the charged offense beyond a reasonable doubt. *People v Jackson*, 292 Mich App 583, 587; 808 NW2d 541 (2011). We draw all reasonable inferences in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The record establishes that there was sufficient evidence to find defendant guilty of the crime of preparation to burn. The elements of preparation to burn are: (1) the defendant put a flammable substance in or around the property in question; (2) the defendant intended to cause a fire, knowing that the fire would damage the property without excuse; and (3) the property had a value of \$1,000 or more but less than \$20,000 at the time defendant intended to burn it. See CJI2d 31.19. In this case, the parties stipulated to the third element, i.e., that the value of the house was between \$1,000 and \$20,000. Regarding the other two elements, Banks and Fultz testified that they heard liquid splatter on the floor. Banks testified that, after she got up from the couch, she saw defendant pouring what appeared to be gasoline from a canister onto the kitchen and dining room floors. Both women also testified that defendant walked into the living room and began flicking a lighter. In addition, Koza found an orange lighter in defendant's pocket. Koza testified that defendant admitted to pouring gasoline in the house and to initially intending on burning the house down. Viewing this evidence in a light most favorable to the prosecution, *Jackson*, 292 Mich App at 587, a reasonable juror could find that the prosecution established the necessary elements of preparation to burn.

The record also establishes that there was sufficient evidence to find defendant guilty of the crime of assault with intent to cause great bodily harm. "The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporal hurt to another, (2) coupled with an intent to do great bodily harm less than murder." *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997), mod on other grounds 457 Mich 885 (1998). Banks and Fultz testified that defendant, after pouring the gasoline, walked into the living room while flicking a lighter. In addition, both women testified that they feared for their lives. Moreover, Koza testified that defendant admitted that he initially intended on burning the house down.

Although defendant claims that there was insufficient evidence of intent to do great bodily harm because of his testimony at trial, this Court defers to the jurors' assessment of the witnesses' credibility. *Nowack*, 462 Mich at 400. Viewing the evidence in a light most favorable to the prosecution, *Jackson*, 292 Mich App at 587, a reasonable juror could find that the prosecution proved beyond a reasonable doubt that defendant intended to burn the house and to inflict great bodily harm on its residents.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell